In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1108

CANDIS O. RAY, T/A CANDIS O. RAY AGENCY,
PETITIONER

v.

FEDERAL COMMUNICATIONS COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE FEDERAL COMMUNICATIONS COMMISSION IN OPPOSITION

Petitioner, Candis O. Ray, seeks review of a judgment of the court of appeals (Pet. App. S) which affirmed without opinion the Federal Communications Commission's dismissal of her complaint against television station WBTV (Pet. App. Q).[1]

As the Commission indicated in its Memorandum Opinion and Order (Pet. App. Q) this controversy

[1] By order of May 27, 1970, the court of appeals amended the petition for review filed under 47 U.S.C. 402(a) to a notice of appeal under 47 U.S.C. 402(b) and deleted the United States as a party respondent.

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has a long history. It began in 1952 when WBTV allegedly broke a contract with Miss Ray involving the production of a television program. After she had unsuccessfully litigated the matter in North Carolina courts, petitioner filed a complaint with the Commission on December 8, 1960. On May 17, 1961, the Commission renewed the station's license, noting that affidavits submitted by the licensee categorically denied petitioner's allegations and that the Commission has traditionally taken the position that private contractual disputes should be resolved judicially (Pet. App. A).

Miss Ray renewed her complaint on July 15, 1961, and March 5, 1962, asking the Commission "to examine the false statements sworn under oath by the licensee, its attorney and the others submitting affidavits" and to report its findings to the Justice Department. Thereafter, on November 29, 1963, WBTV's license was renewed. Miss Ray initiated a new series of complaints on January 25, 1965, when she wrote to the Commission that WBTV had "withheld" statements by its employees in responding to her 1960 complaint. The Commission's staff investigated these complaints and concluded on the basis of all the available information that WBTV had not concealed any facts from the Commission (Pet. App. J). By order released October 27, 1967, the Commission denied an application to review the staff's action renewing WBTV's license (Pet. App. K). That order was never appealed.

Miss Ray renewed her complaint in 1969 when WBTV sought renewal of its license. By Memorandum Opinion and Order released February 16, 1970 (Pet. App. Q), the Commission dismissed Miss Ray's complaint because her most recent pleading added "nothing of substance that has not already been the subject of our careful consideration." The Commission concluded that a need existed for administrative finality, and further observed that Section 405 of the Communications Act, 47 U.S.C. 405, precluded further consideration of her complaint.[2]

After full briefing and oral argument the court of appeals affirmed the Commission's order, noting that "while the issues presented occasion no need for an opinion, they have been accorded full consideration by the Court. See Local Rule 13(c)." Local Rule 13(c) of the United States Court of Appeals for the District of Columbia Circuit provides that:

> In accordance with recommendations for improvement of judicial administration, this court may, while according full consideration of the issues, dispense with opinions where the issues occasion no need therefor, and confine its action to such abbreviated disposition as it may deem appropriate, *e.g.*, affirmance by order of a decision or judgment of a court or administrative agency; a judgment, or affirmance or reversal, containing a notation of precedents, or accompanied by a brief memorandum. [Footnote omitted.]

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[2] Section 405 provides in part that "[a] petition for rehearing must be filed within 30 days from the date upon which public notice is given of the order * * * complained of."

Under the circumstances of this case, petitioner's objection to the use of that procedure is without merit.

The petition for certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

RICHARD E. WILEY,
General Counsel,
Federal Communication Commission.

JANUARY 1971.

U.S. GOVERNMENT PRINTING OFFICE : 1970